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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 456/2011

Decision adopted by the Committee at its fifty-fourth session (20 April to 15 May 2015)

Submitted by:	Hilda Mariolyn Hernández Colmenarez and Francisco Arturo Guerrero Sánchez (represented by Humberto Prado, Venezuelan Prison Observatory)
Alleged victim:	Francisco Dionel Guerrero Larez (husband and son of the complainants, respectively)
State party:	Bolivarian Republic of Venezuela
Date of complaint:	6 September 2010 (initial submission)
Date of decision:	15 May 2015
Subject matter:	Torture and enforced disappearance of the victim in prison
Procedural issues:	Other procedures of international investigation or settlement
Substantive issues:	Torture and other cruel, inhuman or degrading treatment or punishment; obligation of the State party to take effective measures to prevent torture; arrangements for the custody and treatment of persons deprived of liberty with a view to preventing any occurrence of torture; obligation to carry out a prompt and impartial investigation; and right to redress
Articles of the Convention:	1, 2, 11, 12, 14 and 16

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 456/2011*

Submitted by:	Hilda Mariolyn Hernández Colmenarez and Francisco Arturo Guerrero Sánchez (represented by Mr. Humberto Prado, Venezuelan Prison Observatory)
Alleged victim:	Francisco Dionel Guerrero Larez (husband and son of the complainants, respectively)
State party:	Bolivarian Republic of Venezuela
Date of complaint:	6 September 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 May 2015,

Having concluded its consideration of complaint No. 456/2011, submitted to the Committee by Hilda Mariolyn Hernández Colmenarez and Francisco Arturo Guerrero Sánchez under article 22 of the Convention,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1. The complaint is submitted by Hilda Mariolyn Hernández Colmenarez and Francisco Arturo Guerrero Sánchez on behalf of Francisco Dionel Guerrero Larez, their husband and son, respectively, all of whom are Venezuelan nationals, born on 4 May 1974, 15 December 1945 and 21 March 1973, respectively. The complainants allege that the State party has violated the rights of Mr. Guerrero Larez under articles 2, 11 and 14 of the Convention. The Committee considers that the facts before it may also raise issues under articles 12 and 16 of the Convention (see paras. 3.6, 3.7 and 5.4 below). The complainants are represented by counsel.

* The following members of the Committee participated in the examination of the present communication: Ms. Essadia Belmir, Mr. Alessio Bruni, Mr. Satyabhoosun Gupt Domah, Ms. Felice Gaer, Mr. Abdoulaye Gaye, Mr. Jens Modvig, Mr. Claudio Grossman, Mr. George Tugushi and Mr. Kening Zhang.

The facts as submitted by the complainants

2.1 On 19 December 1997, Francisco Dionel Guerrero Larez was sentenced to 13 years' imprisonment for aggravated robbery in the first degree by Trial Court of First Instance No. 24 of the Caracas Metropolitan Area Criminal Court Circuit. He was serving his sentence in the Venezuelan General Penitentiary, located in the city of San Juan de los Morros in the State of Guárico.

2.2 The complainants submit that, at around 9 a.m. on 7 September 2009, Mr. Guerrero Sánchez received a telephone call from his son, Mr. Guerrero Larez. That same night, he received another telephone call from an unknown person, who informed him that Mr. Guerrero Larez had been murdered in prison. Ms. Hernández Colmenarez heard the news from a relative.

2.3 On 8 September 2009, Mr. Guerrero Sánchez went to the Penitentiary but did not find his son or receive information on his whereabouts. After he had reported the facts to Regional Command No. 2, Unit No. 28, Second Company, San Juan de los Morros Command of the Bolivarian National Guard, the director of the Penitentiary told him that he could not provide information about his son's fate as the prison population was "out of his control". Moreover, Major H.N. of the National Guard informed him that some "*pranes*"[1] (leaders) of the Penitentiary would hand over his son's body to him the following day.

2.4 Subsequently, having found that Mr. Guerrero Larez was missing, the director of the Penitentiary, in the presence of two prosecutors, informed Mr. Guerrero Sánchez that his son had escaped from the prison. The complainants did not believe him in the light of the information that they had received previously. Moreover, on 9 September 2009, Ms. Hernández Colmenarez also reported the disappearance and probable murder of her husband to the Bolivarian National Guard and alleged that she had received information from other inmates of the Penitentiary to the effect that her husband had been murdered, dismembered and buried within the premises of the Penitentiary. The complainants allege that Mr. Guerrero Larez became a victim of reprisals by a group of inmates who exercised de facto control over the prison because he knew about illegal activities that the group was conducting with the complicity of the National Guard commander responsible for the external security of the prison.

2.5 On 16 or 23 September 2009, the complainants contacted the Venezuelan Prison Observatory, an NGO. The Observatory played an active role in handling the complaint about what had happened to Mr. Guerrero Larez and assisted the complainants.

2.6 On 1 October 2009, the complainants submitted an urgent request to the Attorney General to open an investigation into the disappearance of Mr. Guerrero Larez. On 2 and 5 October 2009, the disappearance was also reported to the internal affairs bureau of the National Prison Services Directorate and to the Ministry of People's Power for the Interior and Justice, respectively.

2.7 On 7 October 2009, Public Defender No. 51 of the Caracas Metropolitan Area visited the Penitentiary to attend to the inmates that he represented, including Mr. Guerrero Larez. After failing to locate him among the prison population, the Public Defender met with the prison's deputy director and general secretary and with Assistant Prosecutor No. 9 for Correctional Matters of the State of Guárico, but was unable to obtain information on his whereabouts. He then requested Prosecutor's

[1] According to the complainants, a "*pran*" is a term used in prison slang in the State party to refer to an inmate who acts as the leader of, and exercises effective control over, a prison or specific section thereof.

Office No. 9 for Correctional Matters of the State of Guárico to proceed with investigations into the report filed by the complainants.

2.8 On 9 October 2009, the complainants notified the Office of the Specialized Ombudsman in the State of Guárico of Mr. Guerrero Larez's disappearance and filed another report with Regional Command No. 2, Unit No. 28, Second Company of the San Juan de los Moros Command.

2.9 On 13 October 2009, in the absence of a response from the prison director and other competent prison authorities, the Observatory requested Enforcement Court of First Instance No. 6 of the Caracas Metropolitan Area, which had jurisdiction over Mr. Guerrero Larez's case, to order a criminal investigation into his disappearance and inform relatives of his whereabouts.

2.10 On 13 October 2009, Mr. Guerrero Sánchez requested the Fundamental Rights Department of the Public Prosecution Service to investigate his son's disappearance and possible murder by inmates of the Penitentiary, and the possible participation or responsibility of the prison director and National Guard officers. In his request, Mr. Guerrero Sánchez maintained that his son had not escaped from prison, as had been claimed by the prison authorities, and that other inmates had told him that his son had been targeted after discovering that the "*pranes*", in complicity with Major H.N. of the National Guard, brought women into the Penitentiary on Thursdays and organized wild parties. The Public Prosecution Service subsequently informed Mr. Guerrero Sánchez that Prosecutor's Office No. 3 of the judicial district of the State of Guárico (Prosecutor's Office No. 3) was in charge of the investigation.

2.11 On 3 November 2009, Ms. Hernández Colmenarez petitioned the Inter-American Commission on Human Rights to request the Inter-American Court of Human Rights to grant provisional measures in favour of Mr. Guerrero Larez, alleging that he had disappeared on 7 September 2009 while serving a sentence at the Penitentiary.

2.12 On 4 November 2009, the Inter-American Commission submitted an urgent request for information to the State party, asking it to provide details, within 48 hours, of Mr. Guerrero Larez's whereabouts, his physical condition and the reasons why he had been unable to contact his relatives, in addition to any other information regarding his situation and whereabouts, in accordance with article XIV of the Inter-American Convention on Forced Disappearance of Persons. The complainants allege that the State party did not supply any information.

2.13 On 13 November 2009, the Inter-American Commission submitted to the Inter-American Court of Human Rights a request for provisional measures requiring the State party to protect the life and personal integrity of Mr. Guerrero Larez.

2.14 On or around 16 November 2009, Ms. Hernández Colmenarez filed an application for *amparo* in the form of habeas corpus (a petition for habeas corpus) with the Caracas Metropolitan Area Criminal Court Circuit.

2.15 On 17 November 2009, the Inter-American Court granted provisional measures requiring the State party to take the necessary steps to determine the situation and whereabouts of Mr. Guerrero Larez and protect his life and personal integrity, and to update the Court every two months regarding the implementation of the decision. The complainants submit that the State party complied with the requirements laid down by the Court only in a formal sense, limiting itself to indicating that the Public Prosecution Service had launched a criminal investigation and that Mr. Guerrero Larez had reportedly escaped from the prison.

2.16 On 19 November 2009, Court of First Instance No. 41 with Control Functions of the Caracas Metropolitan Area Criminal Court Circuit declined to deal with the petition for habeas corpus on the ground that it lacked competence. It referred the

petition to the President of the Criminal Court Circuit of the State of Guárico pursuant to articles 7 and 39 of the Protection of Constitutional Rights and Guarantees Act.

2.17 On 24 November 2009, Ms. Hernández Colmenarez filed a petition for habeas corpus with the courts of first instance of the Criminal Court Circuit of the State of Guárico, alleging that Mr. Guerrero Larez had disappeared while deprived of his liberty in the Penitentiary; that despite the requests for information and the complaints filed with the prison authorities and the Public Prosecution Service, his situation and whereabouts were unknown; and that therefore his rights to life, personal freedom and physical and mental integrity had been violated.

2.18 During the hearings before Criminal Court of First Instance No. 2 with Control Functions of the Criminal Court Circuit of the State of Guárico (Court No. 2), the Public Prosecution Service announced that Prosecutor's Office No. 3 was in charge of the investigation into the possible continuing crime of enforced disappearance affecting Mr. Guerrero Larez. It had not been possible, however, to conduct an on-site inspection of the Penitentiary because of the dangerous conditions inside the establishment. Moreover, the prison authorities stated that it would not be possible to issue a list of the inmates who had been present in the Penitentiary on 7 September 2009; that in any case, Mr. Guerrero Larez's name had been struck off the list as he could not be located and was thus presumed to have escaped; and that the Ministry of the Interior and Justice had been notified of the facts on 14 September 2009.

2.19 On 4 December 2009, Court No. 2 granted the habeas corpus request and ordered the Public Prosecution Service to conduct a prompt investigation to establish the whereabouts of Francisco Dionel Guerrero Larez, including through witness interviews and an inspection of the Penitentiary premises to determine the veracity of the allegation. In that connection, it ordered the Ministry of People's Power for the Interior and Justice and the General Command of the Bolivarian National Guard to take the necessary steps to assist the Public Prosecution Service and the Ombudsman's Office in establishing his legal situation, whereabouts and physical condition, and in providing protection for his fundamental rights to life and personal integrity.

2.20 The on-site inspection ordered by Court No. 2 took place on 25 February 2010 with the participation of public prosecutors and a commission of Unit No. 28 of the Bolivarian National Guard, but did not produce any positive results. The complainants allege that the authorities refused to conduct an adequate and thorough inspection of the Penitentiary, on the ground that they could not guarantee the safety of any of the persons present at the inspection. In particular, they maintain that, despite having knowledge of testimonies from other inmates indicating that Mr. Guerrero Larez had been tortured, murdered, dismembered and buried in the Penitentiary, and of where his remains were presumed to have been buried, the authorities did not carry out enough excavations or take any other step to verify the information.

2.21 The complainants point out that, pursuant to the State party's criminal procedure law, the Public Prosecution Service is responsible not only for criminal proceedings but also for handling investigations into the offences and directing the activities of the police investigation bodies. When faced with a request to open an investigation, the Public Prosecution Service has a duty to initiate proceedings and order its subsidiary bodies to take appropriate measures.

2.22 The complainants submit that the matter before the Committee has not been and is not being examined under another procedure of international investigation or settlement. The procedure before the Inter-American Court of Human Rights was limited only to the adoption of provisional measures by the Inter-American Court of Human Rights with a view to protecting the life and physical integrity of Mr. Guerrero

Larez, and at no stage was any individual petition filed or a review on the merits requested or conducted.

2.23 With regard to the admissibility criteria established in article 22, paragraph 5 (b), of the Convention, the complainants contend that there is no appropriate domestic remedy left for them to exhaust. Even though they reported the disappearance of Mr. Guerrero Larez promptly, the authorities have acted negligently; no thorough investigation has been conducted into the facts at issue and, to date, the fate of their relative has not been ascertained. The investigation initiated by the Public Prosecution Service has not led to the establishment of his whereabouts or the identification of the persons involved in his torture and enforced disappearance. Similarly, the decision of Court No. 2 in which it granted the habeas corpus request submitted by Ms. Hernández Colmenarez has been ineffective.

The complaint

3.1 The complainants allege that Mr. Guerrero Larez is a victim of a violation by the State party of his rights under articles 2, 11 and 14 of the Convention.

3.2 The complainants argue that the general state of prisons and the human rights situation of persons deprived of their liberty in the State party is a matter of concern for human rights bodies such as the Inter-American Commission. They draw attention to overcrowding, the lack of basic services, the high degree of insecurity, the number of deaths and assaults in prisons, as well as the failure to investigate and impunity. Against this background of violence, the prison staff, particularly the military personnel within the National Guard, who are responsible for guarding the perimeter and exterior of prisons, frequently resort to a disproportionate use of firearms and subject inmates to severe beatings that often prove fatal. Moreover, with the knowledge and acquiescence of the prison authorities, organized gangs of prisoners commit acts of sexual violence, armed attacks, serious assaults and murders against other inmates who refuse to submit to extortion or who compete for control over parts of the prison. According to information available when the complaint was submitted to the Committee, between 1999 and 2008, 3,664 people were presumed to have died and 11,401 to have been injured in places of deprivation of liberty in the State party.[2]

3.3 With regard to article 2 of the Convention, the complainants allege that, despite the general situation described above, the prison authorities have not taken effective legislative, judicial or other measures to prevent the ongoing practice of torture and cruel, inhuman or degrading treatment in prisons. In the present case, the State party did not take any step to prevent Mr. Guerrero Larez from being subjected to acts of torture or, in particular, to prevent his disappearance at the hands of other inmates, with the acquiescence of the civil authorities of the Penitentiary and of National Guard officers.

3.4 The complainants refer to the general level of violence in the State party's prisons (see para. 3.2 above) and maintain that the State party has violated its obligations under article 11 of the Convention by acting negligently in failing to adopt sufficient and adequate measures to guarantee that persons deprived of their liberty in prisons are not subjected to torture. The prison situation has not changed significantly in over 10 years and no policies or plans have been adopted to address the level of violence in prisons.[3]

3.5 The State party has not granted any redress to the victims in accordance with article 14 of the Convention. On the contrary, the indifference of the authorities to the

[2] The complainants refer to *Democracy and Human Rights in Venezuela*, a report of the Inter-American Commission on Human Rights (OAS/Ser.L/V/II. Doc 54), paras. 811 et seq.

[3] Ibid., paras. 829 and 850.

complainants' claim and the lack of information on the situation or whereabouts of Mr. Guerrero Larez have caused additional suffering to the complainants, who still do not know whether their relative is alive or not. In that connection, the complainants indicate that they have received only unofficial reports to the effect that their relative was tortured, dismembered and buried in the Penitentiary. Despite their efforts and complaints, in practice, the Public Prosecution Service opened an investigation only in the formal sense and no effective steps were taken to determine the situation or whereabouts of Mr. Guerrero Larez. Moreover, nobody has been charged with the offences and no redress has been provided for the harm caused.

3.6 The Committee notes that the facts presented in the complaint raise issues under article 12 of the Convention as they relate to the torture allegedly suffered by Mr. Guerrero Larez, in particular, owing to his disappearance while serving a sentence at the Penitentiary; to the lack of a prompt and impartial investigation into the circumstances of his alleged disappearance; and to the lack of information on his situation and whereabouts.

3.7 The Committee also notes that the facts presented in the complaint raise issues under article 16 of the Convention, with regard to the rights of the complainants, as they relate to the manner in which the complainants were treated by the authorities in their efforts to ascertain the whereabouts and fate of Mr. Guerrero Larez and seek justice.

3.8 By way of redress, the complainants request the Committee to recommend that the State party: (a) conduct a thorough investigation into the circumstances in which Mr. Guerrero Larez was subjected to torture and cruel, inhuman or degrading treatment, and disappeared; (b) establish the whereabouts of Mr. Guerrero Larez and, if necessary, have his remains returned to the complainants; and (c) grant the complainants adequate compensation for the harm caused.

State party's failure to cooperate

4. On 4 March and 17 November 2011, 25 July 2012 and 25 January 2013, the State party was invited to submit its comments on the admissibility and the merits of the complaint. The Committee notes that no information has been received in this connection. It finds the State party's refusal to communicate any information on the admissibility and/or merits of the complainants' claims regrettable. The Committee recalls that the State party is obligated, pursuant to the Convention, to submit written explanations or statements to the Committee in order to clarify the matter and indicate the steps, if any, that the State party may have taken to remedy the situation. In the absence of a response from the State party, the Committee will give due weight to the complainants' allegations which have been sufficiently substantiated, [4] and will examine each of their complaints in detail.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a complaint, the Committee must decide whether it is admissible under article 22 of the Convention.

5.2 The Committee notes the complainants' claim that the matter before the Committee has not been and is not being examined under another procedure of international investigation or settlement. In this regard, the Committee observes that,

[4] See communication No. 503/2012, *Ntikarahera v. Burundi*, decision adopted on 12 May 2014, para. 4, and communication No. 376/2009, *Bendib v. Algeria*, decision adopted on 8 November 2013, para. 4.

on 4 November 2009, at Ms. Hernández Colmenarez's request, the Inter-American Commission on Human Rights submitted an urgent request for information to the State party pursuant to article XIV of the Inter-American Convention on Forced Disappearance of Persons and that, on 17 November 2009, the Inter-American Court granted provisional measures in favour of Mr. Guerrero Larez. According to information available on the website of the Inter-American Court,[5] on 19 August 2013, the Court decided to lift the provisional measures and archive the file, indicating that "in this matter there is no related individual petition being processed before the Commission".[6] The Committee observes that the measures adopted by the Inter-American Commission and the Inter-American Court did not involve any consideration of the merits of the case. Consequently, the procedures before these authorities do not constitute an examination of the matter within the meaning of article 22, paragraph 5 (a), of the Convention. In these circumstances, and in the absence of information indicating that, since 19 August 2013, the same matter has been or is being examined under another procedure of international investigation or settlement, the Committee finds that there is no obstacle to the admissibility of the complaint under article 22, paragraph 5 (a), of the Convention.

5.3 The Committee recalls with concern that, despite the three reminders sent to it, the State party has not submitted any observations. The Committee therefore finds that it is not precluded from considering the complaint under article 22, paragraph 5 (b), of the Convention.

5.4 The Committee considers that the complainants' allegations under articles 2, 11 and 14 of the Convention have been sufficiently substantiated for the purposes of admissibility and therefore declares these allegations to be admissible. The Committee also considers that the facts presented and the information contained in the case file raise issues under articles 12 and 16 of the Convention in relation to Mr. Guerrero Larez and the complainants, respectively (see paras. 3.6 and 3.7 above). The Committee thus proceeds to its consideration of the merits of the allegations under articles 2, 11, 12 and 14, read separately and in conjunction with article 1 of the Convention, in relation to Mr. Guerrero Larez, and under article 16 in relation to the complainants.

Consideration of the merits

6.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, as required under article 22, paragraph 4, of the Convention. As the State party has not provided any observations on the merits, due weight must be given to the complainants' allegations, to the extent that they have been substantiated.

6.2 Before considering the allegations made by the complainants under the articles of the Convention invoked, the Committee must determine whether the acts to which Mr. Guerrero Larez was subjected constitute acts of torture within the meaning of article 1 of the Convention.

6.3 The Committee notes the complainants' allegation that, on 8 September 2009, after being informed by an unidentified person that Mr. Guerrero Larez had been murdered in the Penitentiary, they visited that establishment but did not find him or receive information on his whereabouts. According to the complainants, additional testimonies indicate that Mr. Guerrero Larez was the victim of reprisals by a group of inmates in the Penitentiary who murdered, dismembered and buried him there, with

[5] See www.corteidh.or.cr/docs/medidas/larez_se_03.pdf.

[6] See matter of Guerrero Larez, Order of the Inter-American Court of Human Rights of 19 August 2013 (provisional measures), para. 8.

the acquiescence of the prison authorities and the Bolivarian National Guard. Despite this information and the fact that his disappearance was reported to the authorities promptly, no thorough investigation has so far been conducted into the acts of torture allegedly suffered by Mr. Guerrero Larez and no sufficient and effective steps have been taken to establish his whereabouts and fate. The Committee further notes that the statements made by the prison authorities before Court No. 2 indicated that Mr. Guerrero Larez had "escaped" from the Penitentiary, without giving any explanation of the basis for this claim.

6.4 The Committee observes that it has been established that, when the facts of this complaint occurred, Mr. Guerrero Larez was serving a custodial sentence in the Penitentiary. In this regard, the Committee recalls that States parties are under a special obligation to take effective measures to prevent torture [7] and ensure that persons deprived of their liberty can exercise the rights enshrined in the Convention, since they bear a special responsibility owing to the extent of the control that prison authorities exercise over such persons. States parties must therefore take the necessary steps to prevent individuals from inflicting acts of torture on persons under their control.[8] The Committee further recalls that enforced disappearance entails multiple human rights violations and a failure by the State party concerned to comply with the obligations contained in the Convention, and that this constitutes in itself, in relation to the disappeared person, or may constitute, in relation to the person's relatives, a form of torture or inhuman treatment contrary to the Convention.[9]

6.5 The Committee observes that, on 8 and 9 September 2009, the complainants reported the disappearance of Mr. Guerrero Larez to the prison director and the Bolivarian National Guard. On 1 and 13 October 2009, they requested the Attorney General and the Fundamental Rights Department of the Public Prosecution Service, respectively, to investigate his disappearance in the Penitentiary, his possible murder at the hands of prison inmates and the possible participation and responsibility of the prison authorities or Bolivarian National Guard officers. In that regard, they indicate that, according to the testimony of other inmates, Mr. Guerrero Larez was a victim of reprisals by a group of inmates because he knew about illegal activities that the group was undertaking in complicity with certain authorities. As announced by the Public Prosecution Service before Court No. 2, Prosecutor's Office No. 3 was in charge of the investigation into the possible crime of enforced disappearance with respect to Mr. Guerrero Larez.

6.6 Nevertheless, the Committee notes that, according to the information contained in the file, as Mr. Guerrero Larez could not be found in the Penitentiary, the authorities merely stated that he had escaped, without offering any relevant information or evidence that might attest to his possible escape from prison and without carrying out a thorough investigation into his alleged escape or the specific circumstances in which it had allegedly taken place. Despite the reports filed by the complainants and the ruling issued by Court No. 2 on 4 December 2009, the fate of Mr. Guerrero Larez still remains unknown. The authorities have not provided any information regarding possible steps that may have been undertaken to establish his

[7] See general comment No. 2 (2008) of the Committee on the implementation of article 2 by States parties, para. 13.

[8] Ibid., paras. 17 and 18.

[9] The Committee has addressed the issue of enforced disappearance in various concluding observations. See, for example, its concluding observations on the combined fifth and sixth periodic reports of Mexico (CAT/C/MEX/CO/5-6, para. 12), the initial report of Rwanda (CAT/C/RWA/CO/1, para. 14), the initial report of Turkmenistan (CAT/C/TKM/CO/1, para. 15), the combined third and fourth periodic reports of Sri Lanka (CAT/C/LKA/CO/3-4, paras. 8 and 9), the fourth periodic report of Colombia (CAT/C/COL/CO/4, paras. 11 and 17), and the initial report of Chad (CAT/C/TCD/CO/1, paras. 14 and 17).

whereabouts and, if he is deceased, his remains have not been located and returned to his family. It has also not been determined whether the prison authorities and the Bolivarian National Guard bear any responsibility in the matter. In particular, no steps were taken to clarify whether Mr. Guerrero Larez's disappearance was intended as a punishment or form of intimidation because he knew about alleged illegal activities conducted by a group of inmates in complicity with certain authorities, as argued by Mr. Guerrero Sánchez before the Fundamental Rights Department of the Public Prosecution Service. In the absence of any refutation by the State party, the Committee concludes that Mr. Guerrero Larez was removed from the protection of the law on 7 September 2009 and that, in the specific circumstances of this case, his enforced disappearance constitutes an act of torture within the meaning of article 1 of the Convention.

6.7 The Committee notes the complainants' allegations under articles 2 and 11 of the Convention that, despite the grave situation of prison violence, the State party has not acted diligently or taken effective legislative, administrative, judicial or other measures to prevent the practice of torture in prisons and, in particular, to protect Mr. Guerrero Larez from becoming a victim of disappearance and, by extension, from being subjected to acts of torture committed by other inmates in the Penitentiary, with the acquiescence of the prison authorities. In this regard, the Committee notes the 2009 report of the Inter-American Commission on Human Rights[10] and recalls its concluding observations on the State party's second periodic report, in which it called on the State party to adopt measures to prevent both prisoner-on-prisoner violence and violence against prisoners by prison personnel, as well as to reinforce independent procedures of inspection in prisons.[11] In the absence of any observations from the State party on mechanisms to monitor the Penitentiary and on other measures to prevent prisoner-on-prisoner violence and the torture of prisoners by or with the acquiescence of the authorities, the Committee finds that the State party is responsible for a violation of articles 2 and 11 of the Convention.

6.8 With regard to article 12 of the Convention, the Committee recalls that States parties have an ex officio obligation to conduct a prompt and impartial investigation wherever there are reasonable grounds to believe that an act of torture has been committed.[12] In the present case, the Committee observes that the complainants were informed that Prosecutor's Office No. 3 was in charge of investigating the possible enforced disappearance of Mr. Guerrero Larez and that, on 25 February 2010, an inspection of the Penitentiary was conducted in the presence of the Public Prosecution Service and a commission of the Bolivarian National Guard. The Committee can find no other evidence of investigative activity on the part of the authorities in the file before it, despite the fact that there were reasonable grounds to believe that an act of torture had been committed. In spite of the complainants' efforts, almost six years after Mr. Guerrero Larez's disappearance in the Penitentiary, the State party has not conducted any prompt, impartial and effective investigations into the allegations of torture arising from his enforced disappearance in the Penitentiary and those responsible have not been brought to justice (see para. 6.6 above). In the light of the information contained in the file and in the absence of any observations by the State party in this respect, the Committee finds that the State party breached its obligations under article 12 of the Convention.

6.9 The Committee notes the complainants' allegations to the effect that no redress has been provided for the harm caused to Mr. Guerrero Larez within the meaning of

[10] *Democracy and Human Rights in Venezuela* (footnote 2 above).

[11] See CAT/C/CR/29/2, para. 11 (e). See also CAT/C/VEN/CO/3-4, para. 10 (a) and para. 19, and general comment No. 2 (2008) of the Committee, paras. 13, 17 and 18.

[12] Communication No. 269/2005, *Ali Ben Salem v. Tunisia*, decision adopted on 7 November 2007, para. 16.7.

article 14 of the Convention.[13] In view of the failure to carry out a prompt and impartial investigation into the allegations made by the complainants and of the points outlined in the preceding paragraphs, the Committee finds that the State party is also in breach of its obligations under article 14 of the Convention.

6.10 The Committee notes that the enforced disappearance of Mr. Guerrero Larez caused anguish and distress for the complainants and that the authorities were indifferent to their efforts to ascertain his whereabouts and fate. The authors have never received an adequate account of the circumstances of his alleged death or escape, nor have his bodily remains been released to them. In the absence of a satisfactory explanation from the State party, the Committee considers that the facts reveal a violation of article 16 of the Convention in relation to the complainants.

7. The Committee, acting pursuant to article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose violations under articles 2 (para. 1), 11, 12 and 14, read separately and in conjunction with article 1, with regard to Mr. Guerrero Larez, and under article 16 with regard to the complainants.

8. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to: (a) conduct a thorough and effective investigation into the circumstances surrounding Mr. Guerrero Larez's disappearance in the Penitentiary; (b) prosecute, try and punish those responsible for the violations committed; and (c) grant compensation and the means for rehabilitation in accordance with the Convention to Mr. Guerrero Larez, if he is still alive, and compensation to the complainants. The Committee urges the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in conformity with the above views.

[13] See general comment No. 3 (2012) of the Committee on the implementation of article 14 by States parties